

1 980.015 (2) (a) The anticipated discharge ~~from a sentence, anticipated or~~
 2 release, on parole ~~or~~, extended supervision, or ~~anticipated release otherwise~~, from a
 3 sentence of imprisonment of a person who has been convicted of or term of
 4 confinement in prison that was imposed for a conviction for a sexually violent offense,
 5 from a continuous term of incarceration, any part of which was imposed for a sexually
 6 violent offense, or from a placement in a Type 1 prison under s. 301.048 (3) (a) 1., any
 7 part of which was imposed for a sexually violent offense. *was required as a result of a conviction*

8 SECTION 68. 980.015 (2) (b) of the statutes is amended to read:

9 980.015 (2) (b) The anticipated release from a secured correctional facility, as
 10 defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02
 11 (15g), or a secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was
 12 placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993
 13 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

14 SECTION 69. 980.015 (2) (c) of the statutes is amended to read:

15 980.015 (2) (c) The anticipated release *of a person* on conditional release under s. 971.17
 16 or the anticipated termination of or discharge of a *PLAIN* from a commitment order under
 17 s. 971.17, if the person who has been found not guilty of a sexually violent offense by
 18 reason of mental disease or defect under s. 971.17.

19 SECTION 70. 980.015 (2) (d) of the statutes is created to read: *person*

20 980.015 (2) (d) The anticipated release on parole or discharge of a person
 21 committed under ch. 975 for a sexually violent offense.

NOTE: See the NOTE to SECTION 64.

22 SECTION 71. 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
 23 to read:

*a commitment order
under 971.17*

the anticipated

980.14 (2) Any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with any provision of this section chapter.

NOTE: Revises s. 980.14 (2), stats., to provide that any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with any provision of ch. 980, stats. ("Agency" means DOC, DHFS, DOJ, or a DA. See SEC. 116. Current law specifies that any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with the requirement that an agency notify the DA or DOJ of the anticipated release or discharge of a person who may be an SVP. See, also, SEC. 116. use e clear (p75)

SECTION 72. 980.02 (1) (a) of the statutes is amended to read:

980.02 (1) (a) The department of justice at the request of the agency with jurisdiction, ~~as defined in s. 980.015 (1)~~, over the person. If the department of justice decides to file a petition under this paragraph, it shall file the petition before the date of the release or discharge of the person.

NOTE: See the NOTE to SEC. 74.

SECTION 73. 980.02 (1) (b) 3. of the statutes is created to read:

980.02 (1) (b) 3. The county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or a commitment order.

NOTE: Revises current law specifying that: (1) DOJ may file a petition to commit a person as an SVP at the request of the agency with the authority or duty to release or discharge the person; and (2) if DOJ does not file a petition, the DA for the county in which the person was convicted, adjudicated delinquent, or found not guilty by reason of insanity or mental disease, defect, or illness, or the county in which the person will reside, may file the petition.

The draft in this SECTION and SECS. 31 and 77: (1) permits the DA of the county in which the person is in custody to file the petition; (2) specifies that a juvenile court does not have jurisdiction over a petition involving a child; and (3) eliminates filing fees.

SECTION 74. 980.02 (1m) of the statutes is created to read:

980.02 (1m) A petition filed under this section shall be filed before the person is released or discharged.

NOTE: Creates s. 980.02 (1m), specifying that any SVP petition, not only a petition filed by DOJ under current law, must be filed before the person is released or discharged. ✓

1 **SECTION 75.** 980.02 (2) (ag) of the statutes is repealed. ✓

NOTE: Repeals s. 980.02 (2) (ag), stats., providing that the petition may be filed only if the person is within 90 days of discharge or release or other specified circumstances apply. ✓

2 **SECTION 76.** 980.02 (4) (intro.) of the statutes is amended to read:

3 980.02 (4) (intro.) A petition under this section shall be filed in any one of the
4 following: ✓

5 **SECTION 77.** 980.02 (6) of the statutes is created to read: ✓

6 980.02 (6) A court assigned to exercise jurisdiction under chs. 48 and 938 does
7 not have jurisdiction over a petition filed under this section alleging that a child is
8 a sexually violent person. ✓

NOTE: See the NOTE to SEC. 72. *use TION* *use A.R. bark (p39)*

9 **SECTION 78.** 980.03 (2) (intro.) of the statutes is amended to read: ✓

10 980.03 (2) (intro.) Except as provided in ss. ~~980.09 (2) (a)~~ 980.038 (2) and
11 ~~980.10~~ 980.093 and without limitation by enumeration, at any hearing under this
12 chapter, the person who is the subject of the petition has the right to:

13 **SECTION 79.** 980.03 (3) of the statutes is amended to read:

14 980.03 (3) The person who is the subject of the petition, the person's attorney, or
15 ~~the department of justice or the district attorney~~ ^{petitioner} may request that a trial under s.
16 980.05 be to a jury of 12. ✓ A request for a jury trial shall be made as provided under
17 s. 980.05 (2). ✓ Notwithstanding s. 980.05 (2), if the person, the person's attorney, the ^{or}
18 ~~department of justice or the district attorney~~ ^{petitioner} does not request a jury trial, the court
19 may on its own motion require that the trial be to a jury of 12. ✓ The jury shall be
20 selected as provided under s. 980.05 (2m). A verdict of a jury under this chapter is
21 not valid unless it is unanimous. ✓

ARR. white (PL)
1 **SECTION 80.** 980.03 (4) of the statutes is renumbered 980.031 (3) and amended
2 to read:

3 980.031 (3) Whenever a person who is the subject of a petition filed under s.
4 980.02 or who has been committed under s. 980.06 is required to submit to an
5 examination of his or her mental condition under this chapter, he or she may retain
6 ~~experts or a licensed physician, licensed psychologist, or other mental health~~
7 ~~professional persons~~ to perform an examination. If the person is indigent, the court
8 shall, upon the person's request, appoint a qualified and available licensed
9 physician, licensed psychologist, or other mental health professional to perform an
10 examination of the person's mental condition and participate on the person's behalf
11 in a trial or other proceeding under this chapter at which testimony is authorized. ✓
12 Upon the order of the circuit court, the county shall pay, as part of the costs of the
13 action, the costs of a licensed physician, licensed psychologist, or other mental health
14 professional appointed by a court under this subsection to perform an examination
15 and participate in the trial or other proceeding on behalf of an indigent person. ✓

16 (4) If the person a party ✓ retains ~~a qualified expert or the court appoints a~~
17 licensed physician, licensed psychologist, or other mental health ✓ professional person
18 of his or her own choice to conduct an examination under this chapter of the person's
19 mental condition, ✓ the examiner shall have reasonable access to the person for the
20 purpose of the examination, as well as to the person's past and present treatment
21 records, as defined in s. 51.30 (1) (b), and patient health care records as provided
22 under s. 146.82 (2) (c). ~~If the person is indigent, the court shall, upon the person's~~
23 ~~request, appoint a qualified and available expert or professional person to perform~~
24 ~~an examination and participate in the trial or other proceeding on the person's~~
25 ~~behalf. Upon the order of the circuit court, the county shall pay, as part of the costs~~

1 of the action, the costs of an expert or professional person appointed by a court under
2 this subsection to perform an examination and participate in the trial or other
3 proceeding on behalf of an indigent person. An expert (cm), past and present juvenile
4 records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2)
5 (e), and the person's past and present correctional records, including presentence
6 investigation reports under s. 972.15 (6).

7 (5) A licensed physician, licensed psychologist, or other mental health
8 professional person appointed to assist an indigent person who is subject to a petition
9 who is expected to be called as a witness by one of the parties or by the court may not
10 be subject to any order by the court for the sequestration of witnesses at any
11 proceeding under this chapter. No licensed physician, licensed psychologist, or other
12 mental health professional who is expected to be called as a witness by one of the
13 parties or by the court may be permitted to testify at any proceeding under this
14 chapter unless a written report of his or her examination has been submitted to the
15 court and to both parties at least 10 days before the proceeding.

NOTE: Clarifies that a person who is required to submit to an examination will be submitting to an examination of mental condition and the person may retain a licensed physician, licensed psychologist, or other mental health professional to perform the examination. Further, the expert will have full access to juvenile records and correctional records, as well as treatment records and health care records under current law. Finally, an expert will be allowed to testify only if a written report of the examination has been submitted to the court and to both parties at least 10 days before the proceeding.

16 SECTION 81. 980.03 (5) of the statutes is repealed. ✓

17 SECTION 82. 980.031 (title) of the statutes is created to read:

18 980.031 (title) Examinations. ✓

19 SECTION 83. 980.031 (1) and (2) of the statutes are created to read: ✓

20 980.031 (1) If a person who is the subject of a petition filed under s. 980.02
21 denies the facts alleged in the petition, the court may appoint at least one qualified

1 licensed physician, licensed psychologist, or other mental health professional to
 2 conduct an examination of the person's mental condition and testify at trial. ✓

3 (2) The state may retain a licensed physician, licensed psychologist, or other
 4 mental health professional to examine the mental condition of a person who is the
 5 subject of a petition under s. 980.02 or who has been committed under s. 980.06 and
 6 to testify at trial or at any other proceeding under this chapter at which testimony
 7 is authorized. ✓

NOTE: Revises *current law* specifying that whenever a person who is the subject of a commitment petition or who has been committed as an SVP is required to submit to an examination, he or she may retain experts or professional persons to perform an examination. ✓

The *draft* creates s. 980.031 (1) and (2) to provide that:

1. If a person who is the subject of a commitment petition denies the facts alleged in the petition, the court may appoint at least one qualified physician, psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial. ✓

2. The state may retain a physician, psychologist, or other mental health professional to: (a) examine the mental condition of a person who is the subject of a commitment petition or who has been committed; and (b) testify at the trial or any other SVP proceeding at which testimony is authorized. ✓

8 **SECTION 84.** 980.034 of the statutes is created to read:

9 **980.034 Change of place of trial or jury from another county.** (1) The

10 person who is the subject of a petition filed under s. 980.02 or who has been
 11 committed under this chapter may move for a change of the place of a jury trial under
 12 s. 980.05 on the ground that an impartial trial cannot be had in the county in which
 13 the trial is set to be held. ✓ The motion shall be made within 20 days after the
 14 completion or waiver of the probable cause hearing under s. 980.04 (2), whichever is
 15 applicable, except that it may be made after that time for cause.

16 (2) The motion shall be in writing and supported by affidavit which shall state
 17 evidentiary facts showing the nature of the prejudice alleged. The department of

1 justice or the district attorney, whichever filed the petition under s. 980.02, may file
2 counter-affidavits.

3 (3) If the court determines that there exists in the county where the action is
4 pending such prejudice that a fair trial cannot be had, it shall, except as provided in
5 sub. (4), order that the trial be held in any county where an impartial trial can be had.
6 Only one change may be granted under this subsection. The judge who orders the
7 change in the place of trial shall preside at the trial. Preliminary matters prior to
8 trial may be conducted in either county at the discretion of the court. before

9 (4) (a) Instead of changing the place of trial under sub. (3), the court may
10 require the selection of a jury under par. (b) if all of the following apply:

11 1. The court has decided to sequester the jurors after the commencement of the
12 trial. will during

13 2. There are grounds for changing the place of trial under sub. (1).

14 3. The estimated costs to the county appear to be less using the procedure under
15 this subsection than using the procedure for holding the trial in another county. is less of

16 (b) If the court decides to proceed under this subsection it shall follow the
17 procedure under sub. (3) until the jury is chosen in the 2nd county. At that time, the
18 proceedings shall return to the original county using the jurors selected in the 2nd
19 county. The original county shall reimburse the 2nd county for all applicable costs
20 under s. 814.22. that bill

NOTE: Creates new s. 980.034 that: (1) specifies that the general statutory "change of venue" provision does not apply to SVP proceedings; and (2) establishes a change of venue procedure specific to ch. 980 proceedings. Under the draft, the person who is the subject of a commitment petition or who has been committed as an SVP may move for a change of the place of a jury trial on the ground that an impartial jury cannot be had in the county in which the trial is set to be held. If the court determines that there exists in the county such prejudice that a fair trial cannot be had, it must, with one exception, order that the trial be held in any county where an impartial trial can be had. Only one change may be granted and the judge who orders the change in the place of trial must preside over the trial.

Alternatively, instead of changing the place of the trial, the court may order that the jury be selected in another county if all of the following apply:

1. The court ~~has decided to~~^{will} sequester jurors ~~after the commencement of~~^{during} the trial.

2. There are grounds for changing the place of the trial. ^{of}

3. The estimated costs to the county ~~appear to be less~~^{is less than} using an alternate jury ~~rather~~^{the} than changing the place of the trial. ^{estimated cost to the county of}

1 **SECTION 85.** 980.036 of the statutes is created to read:

2 **980.036 Discovery and inspection.** (1) DEFINITIONS. In this section:

3 (a) "Person subject to this chapter" means a person who is subject to a petition
4 filed under s. 980.02 or a person who has been committed under s. 980.06.

5 (b) "Prosecuting attorney" means an attorney representing the state in a
6 proceeding under this chapter.

7 (2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS

8 CHAPTER. Upon demand, a prosecuting attorney shall, within a reasonable time after

9 the probable cause hearing and before a trial under s. 980.05 or other proceeding

10 under s. 980.07 (7), 980.09 (2m), or 980.093 (3), disclose to a person subject to this

11 chapter or ^{his or her} the person's attorney, and permit the person ^{subject to this chapter or his or her} or the person's attorney to

12 inspect and copy or photograph, all of the following materials and information, if the

13 material or information is within the possession, custody, or control of the state:

14 (a) Any written or recorded statement made by the person ^{subject to this chapter} concerning the

15 allegations in the petition filed under s. 980.02 or concerning other matters at issue

16 in the trial or proceeding and the names of witnesses to the ^{person's} written

17 statements. ^{of the person subject to this chapter}

18 (b) A written summary of all oral statements of the person ^{subject to this chapter} that the prosecuting

19 attorney plans to use ^{at} in the course of the trial or proceeding and the names of

20 witnesses to the person's oral statements. ^{of the person subject to this chapter}

21 (c) Evidence obtained in the manner described under s. 968.31 (2) (b), if the

22 prosecuting attorney intends to use the evidence at the trial or proceeding.

1 (d) A copy of the person's criminal record

2 (e) A list of all witnesses, and their addresses, whom the prosecuting attorney

3 intends to call at the trial or proceeding. This paragraph does not apply to rebuttal
4 witnesses or witnesses called for impeachment only.

5 (f) Any relevant written or recorded statements of a witness named on a listed
6 under par. (e), including all of the following:

7 1. Any videotaped oral statement of a child under s. 908.08.

8 2. Any reports prepared in accordance with s. 980.031 (5).

9 (g) The results of any physical or mental examination or any scientific or
10 psychological test or instrument, experiment, or comparison that the prosecuting
11 attorney intends to offer in evidence at the trial or proceeding, and any raw data that
12 were collected, used, or considered in any manner as part of the examination, test,
13 experiment, or comparison.

14 (h) The criminal record of a witness for the state that is known to the
15 prosecuting attorney.

16 (i) Any physical or documentary evidence that the prosecuting attorney intends
17 to offer in evidence at a trial or proceeding.

18 (j) Any exculpatory evidence.

19 (3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING
20 ATTORNEY. Upon demand, a person who is subject to this chapter or the person's
21 attorney shall, within a reasonable time after the probable cause hearing and before
22 a trial under s. 980.05 or other proceeding under s. 980.07 (7), 980.09 (2m), or 980.093
23 (3), disclose to the prosecuting attorney, and permit the prosecuting attorney to
24 inspect and copy or photograph, all of the following materials and information, if the

who is subject
to this
chapter

1 material or information is within the possession, custody, or control of the person or
2 ~~the person's~~ ^{his or her} attorney:

3 (a) A list of all witnesses, other than the person, whom the person intends to
4 call at the trial or proceeding, together with their addresses. This paragraph does
5 not apply to rebuttal witnesses or witnesses called for impeachment only. ✓

6 (b) Any relevant written or recorded statements of a witness named on a list
7 under par. (a), including any reports prepared in accordance with s. 980.031 (5).

8 (c) The results of any physical or mental examination or any scientific or
9 psychological test ^d ~~or instrument~~ ^{who is subject to this chapter}, experiment, or comparison that the person intends
10 to offer in evidence at the trial or proceeding, and any raw data that were collected,
11 used, or considered in any manner as part of the examination, test, experiment, or
12 comparison. ^{Instrument, ?}

13 ^{move} (d) The criminal record of a witness named on a list ^{ed} under par. (a) if the criminal
14 record is known to the person's attorney. ^{for the person who is subject to this chapter}

15 (e) Any physical or documentary evidence that the person intends to offer in
16 evidence at the trial or proceeding. ^{who is subject to this chapter}

17 (4) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS. No comment or
18 instruction regarding the failure to call a witness at the trial may be made or given
19 if the sole basis for the comment or instruction is the fact that the name of the witness
20 appears upon a list furnished under this section. ✓

21 (5) TESTING OR ANALYSIS OF EVIDENCE. On motion of a party, the court may order
22 the production of any item of evidence or raw data that is intended to be introduced
23 at the trial for testing or analysis under such terms and conditions as the court
24 prescribes. ✓

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47/16

1 (6) PROTECTIVE ORDER. Upon motion of a party, the court may at any time order
2 that discovery, inspection, or the listing of witnesses required under this section be
3 denied, restricted, or deferred, or make other appropriate orders. If the prosecuting
4 attorney or the attorney for a person subject to this chapter certifies that ^{ing} to list a
5 witness ^{under sub. (2)(e) or (3)(a)} may subject the witness or others to physical or economic harm or coercion,
6 the court may order that the deposition of the witness be taken ^{under} pursuant to s. 967.04
7 (2) to (6). The name of the witness need not be divulged prior to the taking of such
8 deposition. If the witness becomes unavailable or changes his or her testimony, the
9 deposition shall be admissible at trial as substantive evidence. ✓

10 (7) IN CAMERA PROCEEDINGS. Either party may move for an in camera inspection
11 by the court of any document required to be disclosed under sub. (2) or (3) for the
12 purpose of masking or deleting any material that is not relevant to the case being
13 tried. The court shall mask or delete any irrelevant material. ✓ after

14 (8) CONTINUING DUTY TO DISCLOSE. If, subsequent to compliance with a
15 requirement of this section, and prior to or during trial, a party discovers additional
16 material or the names of additional witnesses requested that are subject to discovery,
17 inspection, or production under this section, the party shall promptly notify the other
18 party of the existence of the additional material or names. ✓ before

19 (9) SANCTIONS FOR FAILURE TO COMPLY. (a) The court shall exclude any witness
20 not listed or evidence not presented for inspection, copying, or photographing
21 required by this section, unless good cause is shown for failure to comply. The court
22 may in appropriate cases grant the opposing party a recess or a continuance. ✓

23 (b) In addition to or in place of any sanction specified in par. (a), a court may,
24 subject to sub. (4), advise the jury of any failure or refusal to disclose material or

1 information required to be disclosed under sub. (2) or (3), or of any untimely
2 disclosure of material or information required to be disclosed under sub. (2) or (3).

3 (10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.

4 When the state public defender or a private attorney appointed under s. 977.08
5 requests photocopies of any item that is discoverable under this section, the state
6 public defender shall pay any fee charged for the photocopies from the appropriation
7 under s. 20.550 (1) (a). If the person providing photocopies under this section charges
8 the state public defender a fee for the photocopies, the fee may not exceed the actual,
9 necessary, and direct cost of photocopying.

10 (11) EXCLUSIVE METHOD OF DISCOVERY. Chapter 804 does not apply to
11 proceedings under this chapter. This section provides the only methods of obtaining
12 discovery and inspection in proceedings under this chapter.

NOTE: Creates, in new s. 980.036, provisions that are specific to discovery in
proceedings relating to SVPs and specifically provides that the general discovery process
in civil actions does not apply in ch. 980, stats., proceedings. Under the draft:

1. Upon demand, a PA *must disclose* and permit the person or the person's attorney
to inspect and copy or photograph all of the following if it is in the possession, custody, or
control of the state:

a. Any written or recorded statement made by the person concerning the
allegations in a petition to commit the person as an SVP or concerning other matters at
issue in the trial or proceeding.

b. A written summary of all oral statements of the person that the PA plans to use
in the course of the trial or proceeding.

c. Evidence obtained by intercepting any oral communication that the PA intends
to use as evidence.

d. A copy of the person's criminal record.

e. A list of all witnesses whom the PA intends to call, except rebuttal or
impeachment witnesses.

f. Any relevant written or recorded statements of a witness.

g. The results of any physical or mental examination or any scientific or
psychological test, or instrument, experiment, or comparison that the PA intends to offer
in evidence and any raw data that were collected, used, or considered in any manner as
part of the examination, test, ^{instrument} experiment, or comparison.

h. The criminal record of a witness for the state that is known to the PA.

i. Any physical or documentary evidence that the PA intends to offer as evidence.

j. Any exculpatory evidence.

2. Upon demand, *the person who is subject to SVP proceedings must disclose* all of
the following:

a. A list of all witnesses whom the person intends to call.

b. Any relevant written or recorded statements of a witness, except rebuttal or impeachment witnesses. ✓

c. The results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the person intends to offer as evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, ^{instrument} experiment, or comparison. ✓

d. The criminal record of a witness for the person that is known to the person's attorney.

e. Any physical or documentary evidence that the person intends to offer as evidence.

3. If, subsequent to compliance with these requirements, and prior to or during trial, a party discovers additional material or the names of additional witnesses, the party must promptly notify the other party of the existence of the additional materials or names. ✓

4. The court must exclude any witness not listed or evidence not presented for inspection unless good cause is shown for failure to comply. The court may advise the jury of the nonresponsiveness of a party. ✓

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1 **SECTION 86.** 980.038 of the statutes is created to read:

2 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**

3 JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION. (a) A motion
4 challenging the jurisdiction or competency of the court or the timeliness of a petition
5 filed under s. 980.02 shall be filed within 10 days after the court holds the probable
6 cause hearing under s. 980.04 (2). Failure to file a motion within the time specified
7 in this paragraph waives the right to challenge the jurisdiction or competency of the
8 court or the timeliness of a petition filed under s. 980.02. ✓

9 (b) Notwithstanding s. 801.11, a court may exercise personal jurisdiction over
10 a person who is the subject of a petition filed under s. 980.02 even though the person
11 is not served as provided under s. 801.11 (1) or (2) with a verified petition and
12 summons or with an order for detention under s. 980.04 (1) and the person has not
13 had a probable cause hearing under s. 980.04 (2). ✓

14 (2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION. (a) At any hearing
15 under this chapter, the state may present evidence or comment on evidence that a
16 person who is the subject of a petition filed under s. 980.02 or a person who has been
17 committed under this chapter refused to participate in an examination of his or her

1 mental condition that was being conducted under this chapter or that was conducted
2 before the petition ^{under s. 980.02} ^{MOVE} was filed for the purpose of evaluating whether
3 to file a petition. ^{under s. 980.02}

4 (b) A licensed physician, licensed psychologist, or other mental health
5 professional may indicate in any written report that he or she prepares in connection
6 with a proceeding under this chapter that the person whom he or she examined
7 refused to participate in the examination. ✓

8 (3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. Unless good cause to
9 the contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (5) (d) may be
10 conducted by telephone or audiovisual means, if available. ✓ If the proceedings are
11 required to be reported under SCR 71.02 (2), the proceedings shall be reported by a
12 court reporter who is in simultaneous voice communication with all parties to the
13 proceeding. ✓ Regardless of the physical location of any party to the telephone call, any
14 action taken by the court or any party shall have the same effect as if made in open
15 court. ^{under this subsection} The proceedings shall be conducted in a courtroom or other place reasonably
16 accessible to the public. Simultaneous access to the proceeding shall be provided to ^a
17 persons entitled to attend by means of a loudspeaker or, upon request to the court,
18 by making ^{the} a person party to the telephone call without charge. ✓

19 (4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL. (a) A motion for
20 postcommitment relief by a person committed under s. 980.06 shall be made in the
21 time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has
22 been committed under s. 980.06 from a final order under s. 980.06, 980.08, or 980.09
23 or from an order denying a motion for postcommitment relief or from both shall be
24 taken in the time and manner provided in ss. 808.04 (3), 809.30, and 809.40. If a
25 person is seeking relief from an order of commitment under s. 980.06, the person

1 shall file a motion for postcommitment relief in the trial court prior to an appeal
2 unless the grounds for seeking relief are sufficiency of the evidence or issues
3 previously raised. ✓

4 (b) An appeal by the state from a final judgment or order under this chapter
5 may be taken to the court of appeals within the time specified in s. 808.04 (4) and in
6 the manner provided for civil appeals under chs. 808 and 809. ✓

7 (5) FAILURE TO COMPLY WITH TIME LIMITS; EFFECT. Failure to comply with any time
8 limit specified in this chapter does not deprive the circuit court of personal or subject
9 matter jurisdiction or of competency to exercise that jurisdiction. ✓ Failure to comply
10 with any time limit specified in this chapter is not grounds for an appeal or grounds
11 to vacate any order, judgment, or commitment issued or entered under this chapter. ✓
12 Failure to object to a period of delay or a continuance waives the time limit that is
13 the subject of the period of delay or continuance. ✓

14 (6) ERRORS AND DEFECTS NOT AFFECTING SUBSTANTIAL RIGHTS. The court shall, in
15 every stage of a proceeding under this chapter, disregard any error or defect in the
16 pleadings or proceedings that does not affect the substantial rights of either party. ✓

NOTE: Creates s. 980.038, providing that:

1. Notwithstanding the normal process for gaining personal jurisdiction in a judicial proceeding, a court may exercise personal jurisdiction over the subject of an SVP petition even though the person is not served under the normal process with a verified petition and summons or served with an order for detention and the person has not had a probable cause hearing. ✓

2. A motion for post-commitment relief by an SVP or an appeal from a final order or from an order denying a motion for post-commitment relief must follow criminal appellate procedure. ✓

3. An appeal by the state from a final judgment or order must follow the procedure for civil appeals. ✓

4. The state is permitted to present evidence or comment on evidence that a person who is the subject of an SVP commitment petition, or that a person who has been committed, refused to participate in an examination of his or her mental condition that was being conducted as part of an SVP proceeding or that was conducted before the commitment petition was filed for the purpose of evaluating whether to file a petition. The draft does not affect the general right to remain silent at any hearing relating to an SVP commitment. ✓

bill

bill
The draft also creates new provisions relating to failure to comply with time limits, specifying that:

1. Failure to comply with any time limit specified in ch. 980, stats., does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. ✓

2. Failure to comply with any time limit is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered. ✓

3. Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance. ✓

1 **SECTION 87.** 980.04 (1) of the statutes is amended to read:

2 980.04 (1) Upon the filing of a petition under s. 980.02, the court shall review
3 the petition to determine whether to issue an order for detention of the person who
4 is the subject of the petition. ✓ The person shall be detained only if there is probable ✓
5 cause to believe that the person is eligible for commitment under s. 980.05 (5). A
6 person detained under this subsection shall be held in a facility approved by the
7 department. If the person is serving a sentence of imprisonment, is in a secured
8 correctional facility, as defined in s. 938.02 (15m), a secured child caring institution,
9 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),
10 or is committed to institutional care, and the court orders detention under this
11 subsection, the court shall order that the person be transferred to a detention facility
12 approved by the department. A detention order under this subsection remains in
13 effect until the ~~person is discharged~~ petition is dismissed after a hearing under sub. ✓
14 (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order
15 under s. 980.06, whichever is applicable.

16 **SECTION 88.** 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and
17 amended to read:

18 980.04 (2) (a) Whenever a petition is filed under s. 980.02, the court shall hold
19 a hearing to determine whether there is probable cause to believe that the person
20 named in the petition is a sexually violent person. ~~If the person named in the petition~~

is in custody, the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody, the ^{subd. 2} Except as provided in par. (b), the court shall hold the probable cause hearing within a reasonable time 30 days, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown upon its own motion, the motion of any party, or the stipulation of the parties. ✓

^{(p2) create A.R. TUV 2.}
SECTION 89. 980.04 (2) (b) of the statutes is created to read:

²
^{stt} 980.04 (2) (b) If the person named in the petition is in custody under a sentence, dispositional order, or commitment and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged from the sentence, dispositional order, or commitment, the probable cause hearing under par. (a) shall be held no later than 10 days after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause shown upon its own motion, the motion of any party, or the stipulation of the parties. ✓

NOTE: Revises ^{MT} current law [s. 980.04 (2) (a)] which specifies that: (1) whenever an SVP commitment petition is filed, the court must hold a hearing to determine whether there is probable cause to believe that the person named in the petition is an SVP; (2) if the person is in custody, the court must hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays, and legal holidays; and (3) if the person is not in custody, the court must hold the hearing within a reasonable time after the filing of the petition.

The draft: ^{bill MT}

1. Requires the court, in general, to hold the probable cause hearing within 30 days, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown. ✓

2. If the person named in the petition is in custody and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, requires the hearing to be held no later than 10 days after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause. See, also, SEC 90. ^{use auto-ly abc (below)}

SECTION 90. 980.04 (3) of the statutes is amended to read:

^{create auto-ly abc (above)}

1 980.04 (3) If the court determines after a hearing that there is probable cause
2 to believe that the person named in the petition is a sexually violent person, the court
3 shall order that the person be taken into custody if he or she is not in custody and
4 shall order the person to be transferred within a reasonable time to an appropriate
5 facility specified by the department for an evaluation by the department as to
6 whether the person is a sexually violent person. If the court determines that
7 probable cause does not exist to believe that the person is a sexually violent person,
8 the court shall dismiss the petition.

9 **SECTION 91.** 980.05 (1) of the statutes is amended to read:

10 980.05 (1) A trial to determine whether the person who is the subject of a
11 petition under s. 980.02 is a sexually violent person shall commence no later than 45
12 90 days after the date of the probable cause hearing under s. 980.04. The court may
13 grant ~~a continuance~~ one or more continuances of the trial date for good cause upon
14 its own motion, the motion of any party or the stipulation of the parties.

NOTE: Revises s. 980.05 (1), stats., to require the trial to commence no later than
90 days after the probable cause hearing (45 days under current law) and permits the
court to grant one or more continuances of the trial date for good cause (current law
permits granting "a continuance").

15 **SECTION 92.** 980.05 (1m) of the statutes is repealed.

NOTE: Specifies, by repealing s. 980.05 (1m), that constitutional rights available
to a defendant in a criminal proceeding are not necessarily available to the person who
is the subject to an SVP commitment petition. Current s. 980.05 (1m), stats., specifies
that: (1) at the trial to determine whether the person is a "sexually violent person" all
rules of evidence in criminal actions apply; and (2) all constitutional rights available to
a defendant in a criminal proceeding are available to the person.

16 **SECTION 93.** 980.05 (2m) of the statutes is created to read:

17 980.05 (2m) (a) At a jury trial under this section, juries shall be selected and
18 treated in the same manner as they are selected and treated in civil actions in circuit
19 court, except that, notwithstanding s. 805.08 (3), each party shall be entitled to 4
20 peremptory challenges or, if the court orders additional jurors to be selected under

✓
1 s. 805.08 (2), to 5 peremptory challenges. A party may waive in advance any or all
2 of its peremptory challenges and the number of jurors called under par. (b) shall be
3 reduced by this number. ✓

✓
4 (b) The number of jurors selected shall be the number prescribed in sub. (2),
5 unless a lesser number has been stipulated to and approved under par. (c) or the court
6 orders that additional jurors be selected. That number of jurors, plus the number
7 of peremptory challenges available to all of the parties, shall be called initially and
8 maintained in the jury box by calling others to replace jurors excused for cause until
9 all jurors have been examined. ✓ The parties shall thereupon exercise in their order,
10 the state beginning, the peremptory challenges available to them, and if any party
11 declines to challenge, the challenge shall be made by the clerk by lot. ✓

✓
12 (c) At any time before the verdict in a jury trial under this section, the parties
13 may stipulate in writing or by statement in open court, on the record, with the
14 approval of the court, that the jury shall consist of any number less than the number
15 prescribed in sub. (2). ✓

NOTE: Revises *current law* specifying that: (1) the person who is the subject of an
SVP commitment petition, the person's attorney, DOJ, or the DA may request that the
trial be to a jury of 12 in order to determine whether the person who is the subject of a
commitment petition is an SVP; (2) the court may also, on its own motion, require that
the trial be to a jury of 12; and (3) a verdict of a jury is not valid unless it is unanimous. ✓

The *draft* creates s. 980.05 (2m) to provide:

- bill
1. For a jury of 12, but the parties may stipulate to a smaller number of jurors. ✓
2. That juries must be selected and treated in the same manner as they are selected
and treated in civil actions in circuit court, except that each party is entitled to 4 ✓
peremptory challenges (instead of 3, as for other civil actions), unless fewer jurors are to
serve on the jury. ✓

create A.R. bag (p5)
16 SECTION 94. 980.05 (3) (a) of the statutes is amended to read:

17 980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the
18 burden of proving ~~the allegations in the petition~~ beyond a reasonable doubt that the
19 person who is the subject of the petition is a sexually violent person. ✓

NOTE: Revises s. 980.05 (3) ^(a) to clarify that in a trial under ch. 980, the petitioner's burden is to prove beyond a reasonable doubt *that the person is an SVP* (and not the general "allegations in the petition" under current law). ✓

1 **SECTION 95.** 980.05 (3) (b) of the statutes is amended to read:

2 980.05 (3) (b) If the state alleges that the sexually violent offense or act that
3 forms the basis for the petition was an act that was sexually motivated as provided
4 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt
5 that the alleged sexually violent act was sexually motivated. ✓

6 **SECTION 96.** ^{made A.R. def (p7) (p59)} 980.07 (1) of the statutes is renumbered 980.07 (1) (intro.) and
7 amended to read:

8 980.07 (1) (intro.) If a person has been ⁽³⁾ is committed under s. 980.06 and has
9 not been discharged under s. 980.09 or 980.093, the department shall conduct an
10 examination of his or her mental condition within 6 12 months after an the date of
11 the initial commitment order under s. 980.06 and again thereafter at least once each
12 12 months ~~for the purpose of determining~~ to determine whether the person has made
13 sufficient progress for the court to consider whether the person should be placed on
14 supervised release or discharged. ✓ At the time of a reexamination under this section,
15 the person who has been committed may retain or ~~seek to~~ have the court appoint an
16 any of the following: ✓

17 (a) An examiner as provided under s. 980.03 (4) 980.031 (3), except that the
18 court is not required to appoint an examiner if supervised release or discharge is
19 supported by the examination conducted by the department. ✓ The county shall pay
20 the costs of an examiner appointed under this paragraph as provided under s. 51.20
21 (18) (a).

NOTE: Provides that a court is not required to appoint an examiner at the request of a petitioner for supervised release when supervised release or discharge is supported by the examination conducted by DHFS. ✓ See, also, NOTE to SEC. 100.

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(p58)

1 **SECTION 97.** 980.07 (1) (b) of the statutes is created to read:

2 980.07 (1) (b) An attorney as provided under s. 980.03 (2) (a).

3 **SECTION 98.** 980.07 (1g) of the statutes is created to read:

4 980.07 (1g) Any examiners under this section shall have reasonable access to
5 the person for purposes of examination and to the person's past and present
6 treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as
7 provided under s. 146.82 (2) (c).

8 **SECTION 99.** 980.07 (1m) of the statutes is created to read:

9 980.07 (1m) At the time for any examination under sub. (1), the department
10 shall prepare a treatment report based on its treating professionals' evaluation of the
11 person and shall provide a copy of the report to any examiner conducting an
12 examination under sub. (1). The report shall consider all of the following:

13 (a) The specific factors associated with the person's risk for committing another
14 sexually violent offense.

15 (b) Whether the person has made significant progress in treatment or has
16 refused treatment.

17 (c) The ongoing treatment needs of the person.

18 (d) Any specialized needs or conditions associated with the person that must
19 be considered in future treatment planning.

NOTE: See the NOTE to SEC. 100.

20 **SECTION 100.** 980.07 (2) of the statutes is amended to read:

21 980.07 (2) Any examiner conducting an examination under ~~this section~~ sub. (1)
22 shall prepare a written report of the examination no later than 30 days after the date
23 of the examination. The examiner shall place a copy of the report in the person's
24 medical records and shall provide a copy of the report to the department. The report

1 shall include an assessment of the risk that the person will reoffend, whether the risk
 2 can be safely managed in the community if reasonable conditions of supervision and
 3 security are imposed, and whether the treatment that the person needs is available
 4 in the community. The department shall then send the treatment report, the written
 5 examination report, and a written statement from the department recommending
 6 continued institutional care, supervised release, or discharge to the court that
 7 committed the person under s. 980.06. A copy of each report and the department's
 8 recommendation shall be provided also to the district attorney or department of
 9 justice, whichever is applicable, and to the person's attorney as soon as he or she is
 10 retained or appointed. If the department concludes that the person does not meet
 11 the criteria for commitment as a sexually violent person, the department shall
 12 petition for discharge in accordance with the provisions of s. 980.09 (1).

petitioner

NOTE: Revises, in SECS 96 to 100, current law requiring DHFS to conduct an examination of the mental condition of each person who has been committed as an SVP within 6 months of the initial commitment and every 12 months thereafter to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. Current law requires any examiner conducting an examination to prepare a written report of the examination no later than 30 days after the date of the examination, and requires the report to be placed in the person's medical records and a copy must be given to the court.

Under the draft:

1. DHFS must conduct the examination *within 12 months* after the date of the initial commitment order and every 12 months thereafter.

2. At the time of the examination, DHFS must prepare a treatment report based on its treating professionals' evaluation of: (a) the specific factors associated with the person's risk for committing another sexually violent offense; (b) whether the person has made significant progress in treatment or has refused treatment; (c) the ongoing treatment needs of the person; and (d) any specialized needs or conditions associated with the person that must be considered in future treatment planning. A copy of the report must be given to the examiner.

3. The examiner's report must include an assessment of the risk that the person will reoffend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community. The report must be prepared no later than 30 days after the date of the examination and must be provided to DHFS.

4. DHFS must send the treatment report, the written examination report, and a written statement from DHFS recommending either continued institutional care, supervised release, or discharge to the court. Copies of these documents must also be provided to the DA or DOJ and to the person's attorney.

the petitioner

5. If the report concludes that the person does not meet the criteria for commitment as an SVP, DHFS must petition for discharge. ✓

1 **SECTION 101.** 980.07 (3) of the statutes is amended to read:

2 980.07 (3) Notwithstanding sub. (1), the court that committed a person under
3 s. 980.06 may order a reexamination of the person at any time during the period in
4 which the person is subject to the commitment order. Any report ordered under this
5 subsection shall conform to subs. (1m) and (2).

6 **SECTION 102.** ^{made P.R. Lemon (p 9)} 980.07 (4) to (7) of the statutes are created to read:

7 980.07 (4) (a) Within 30 days after the filing of the reexamination report,
8 treatment report, and recommendation under this section, the person subject to the
9 commitment ^{or the petitioner}, the district attorney, or the department of justice, whichever is
10 applicable, may object to the department's recommendation under sub. (2) by filing
11 a written objection with the court. ✓

12 (b) If no timely objection is filed under par. (a), one of the following applies:

13 1. If the department's recommendation under sub. (2) is for continued
14 institutional care, the department's recommendation shall be implemented without
15 a hearing. ✓

16 2. If the department's recommendation under sub. (2) is for supervised release
17 or discharge, the court shall proceed under sub. (7) or s. 980.09. ✓

18 (5) (a) If the person files a timely objection without counsel, the court shall
19 serve a copy of the objection and any supporting documents on the district attorney
20 or department of justice, whichever is applicable. If the person objects through
21 counsel, his or her attorney shall serve the district attorney or department of justice,
22 whichever is applicable. If the district attorney or department of justice objects, it
23 shall serve the person or his or her counsel.

petitioner

use 3x

1 (b) If the person filing an objection is requesting discharge, the court may not
2 proceed under sub. (7). The court may proceed under s. 980.093 if the person files
3 a petition under that section. *petitioner*

4 (6) The district attorney or department of justice, whichever is applicable, may
5 employ experts or professional persons to support or oppose any recommendation.

6 (6m) Subject to s. 980.03 (2) (a), the court, before proceeding under sub. (7),
7 shall refer the matter to the authority for indigency determinations under s. 977.07
8 (1) and appointment of counsel under s. 977.05 (4) (j) if the person is not represented
9 by counsel. The determination of indigency and the appointment of counsel shall be
10 done as soon as circumstances permit.

11 (7) (a) Except as provided in subs. (4) (b) 1. and (5) (b), unless the department
12 recommends discharge, the court, without a jury, shall hold a hearing to determine
13 whether to authorize supervised release. The court shall hold the hearing within 30
14 days after the date on which objections are due under sub. (4), unless the petitioner
15 waives this time limit. Expenses of proceedings under this subsection shall be paid
16 as provided under s. 51.20 (18) (b), (c), and (d).

17 (am) The department of justice shall represent the department of health and
18 family services at any hearing under this subsection unless the departments have
19 adverse interests. If the departments have adverse interests, the department of
20 health and family services shall be represented at the hearing by its agency counsel
21 or by an attorney that it retains.

22 (b) The court shall determine from all of the evidence whether to continue
23 institutional care and, if not, what the appropriate placement would be for the person
24 while on supervised release. In making a decision under this subsection, the court
25 may consider, without limitation because of enumeration, the nature and

1 circumstances of the behavior that was the basis of the allegation in the petition
2 under s. 980.02 (2) (a), the person's mental history and present mental condition,
3 whether the person has demonstrated significant progress in his or her treatment,
4 whether the person has refused treatment, and, if the court were to authorize
5 supervised release, where the person would live, how the person would support
6 himself or herself, and what arrangements would be available to ensure that the
7 person would have access to and would participate in necessary treatment.

8 (bm) The court shall select a county to prepare a report under par. (c). Unless
9 the court has good cause to select another county, the court shall select the person's
10 county of residence. A preliminary decision by the court under this paragraph or
11 under par. (cm) to refer a case to a county department or the court's failure to make
12 such a decision shall not affect the court's power to authorize or not authorize
13 supervised release under this subsection.

14 (c) The court shall order the county department under s. 51.42 in the county
15 of intended placement to prepare a report, either independently or with the
16 department of health and family services, identifying prospective residential options
17 for community placement. In identifying prospective residential options, the county
18 department shall consider the proximity of any potential placement to the residence
19 of other persons on supervised release and to the residence of persons who are in the
20 custody of the department of corrections and regarding whom a sex offender
21 notification bulletin has been issued to law enforcement agencies under s. 301.46
22 (2m) (a) or (am). The county department shall complete its report within 30 days
23 following the court order.

1 (cm) If the court determines that the prospective residential options identified
2 in the report under par. (c) are inadequate, the court shall select another county to
3 prepare a report under par. (c).

4 (d) The court may order that a person be placed on supervised release only if
5 it finds, based on all of the reports, trial records, and evidence presented, that all of
6 the following apply: ✓

7 1. The person who will be placed on supervised release:

8 a. ^{The person} ~~Has~~ made sufficient progress in treatment such that the risk that ~~the person~~ ^{he or she}
9 will reoffend can be safely managed in the community and the person's treatment
10 progress can be sustained in the community, and

11 b. The person's risk for reoffense has been reduced to a level that it is not likely
12 that the person will reoffend if so placed. ✓

13 2. There is ^{is} treatment reasonably available in the community and the person
14 who will be placed on supervised release will be treated by a provider who is qualified
15 to provide the necessary treatment in this state. ✓

16 3. The provider presents a specific course of treatment for the person who will
17 be placed on supervised release, agrees to assume responsibility for the person's
18 treatment, agrees to comply with the rules and conditions of supervision imposed by
19 the court and the department, agrees to report on the person's progress to the court
20 on a regular basis, and agrees to report any violations of supervised release
21 immediately to the court ^{and} the department of justice or the district attorney, as
22 applicable. ^{petitioner}

23 4. The person who will be placed on supervised release has housing
24 arrangements that are sufficiently secure to protect the community, and the person

1 or agency that is providing the housing to the person who will be placed on supervised
2 release agrees in writing to the following conditions: ✓

3 a. To accept the person who will be placed supervised release. ✓

4 b. To provide or allow for the level of safety that the court requires. ✓

5 c. To immediately report to the court and the department of justice or the
6 district attorney, as applicable, any unauthorized absence of the person who will be
7 placed on supervised release from the housing arrangement to which the person has
8 been assigned. This subd. 4. c. does not apply unless ^{applies only if} the person or agency that is
9 providing the housing is a state or local government agency or is licensed by the
10 department. ✓

11 5. The person who will be placed on supervised release will comply with the
12 provider's treatment requirements and all of the requirements that are imposed by
13 the department and the court. ✓

14 6. The department has made provisions for the necessary services, including
15 sex offender treatment, other counseling, medication, community support services,
16 residential services, vocational services, and alcohol or other drug abuse treatment. ✓

17 7. The degree of supervision and ongoing treatment needs of the person ^{who will}
18 ^{that is} required for the safe management of the person ^{him or her} in the community can be provided ^{be placed}
19 through the allocation of a reasonable level of resources. ^{on supervised release}

NOTE: Creates new s. 980.07(4) to (7) revising current law relating to requests for supervised release. Under current law:

1. A person who is committed as an SVP may petition the committing court to authorize supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. ✓
The director of the facility at which the person is placed may petition on the person's behalf at any time. ✓

2. Within 20 days after receiving the petition, the court must appoint one or more examiners who have specialized knowledge determined by the court to be appropriate, ✓
who must examine the person and furnish a written report to the court within 30 days ✓
after the appointment. If any examiner believes that the person is appropriate for

supervised release, the examiner must report on the type of treatment and services that the person may need while in the community on supervised release. ✓

3. The court, without a jury, must hear the petition within 30 days after the examiner's report is filed, unless the time limit is waived by the petitioner. ✓

4. The court must grant the petition unless the state proves by clear and convincing evidence that: (a) it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) the person has not demonstrated significant progress in his or her treatment or the person has refused treatment. ✓

5. In making this decision, the court may consider: (a) The nature and circumstances of the behavior that was the basis of the allegation in the petition to commit the person; (b) the person's mental history and present mental condition; (c) where the person will live; (d) how the person will support himself or herself; and (e) what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment if the person is a serious child sex offender. ✓

6. If the court finds that the person is appropriate for supervised release, the court must notify DHFS. ✓ DHFS must make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence. ✓

7. DHFS and the county department in the county of residence must prepare a plan that does all of the following: (a) identifies the treatment and services, if any, that the person will receive in the community; (b) addresses the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (c) specifies who will be responsible for providing the treatment and services identified in the plan. ✓

8. The plan must be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless DHFS, the county department, and the person request additional time to develop the plan. ✓

bill
MD The *draft* creates a new process for granting supervised release. As noted above, DHFS must recommend continued institutional care, supervised release, or discharge through the reexamination process. The new process is: ✓

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the SVP commitment, the DA, or DOJ, *or the petitioner* may object to the recommendation by filing a written objection with the court.

2. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. ✓ Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner. ✓

3. The court must determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person while on supervised release. As under current law, in making this decision, the court may consider the following: (a) the nature and circumstances of the behavior that was the basis of the allegation in the commitment petition; (b) the person's mental history and present mental condition; (c) the person's progress in treatment; (d) the person's refusal to participate in treatment; and (e) if the court were to authorize supervised release, ✓ where the person would live, how the person would support himself or herself, and what arrangements would be available to ensure that the person would have access to and would participate in treatment. ✓

4. The court must select a county to prepare a report on the person's prospective residential options. Unless the court has good cause to select another county, the court must select the person's county of residence. ✓

5. The court must order the county department in the county of intended placement to prepare the report, either independently or with DHFS, identifying prospective residential options. In identifying prospective residential options, the county department must consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of DOC and regarding whom a sex offender notification bulletin has been issued. The county department must complete its report within 30 days following the court order.

6. If the court determines that the prospective residential options identified in the report are inadequate, the court must select one or more other counties to prepare a report.

7. The court may order that a person be placed on supervised release if it finds that all of the following apply:

a. The person who will be placed on supervised release: (1) has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained; and (2) the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed.

b. That there is treatment reasonably available in the community and the person who will be placed on supervised release will be treated by a provider who is qualified to provide the necessary treatment in this state.

c. The provider presents a specific course of treatment for the person who will be placed on supervised release, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court, DOJ, or the DA,

as applicable and the petitioner

d. The person who will be placed on supervised release has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and DOJ or the DA, as applicable, any unauthorized absence of the person from the housing arrangement.

e. The person who will be placed on supervised release will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court.

f. DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment.

g. The degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources.

create AR-JUNE (p 10)

who will be placed on supervised release that is

SECTION 103. 980.08 of the statutes is repealed and recreated to read:

980.08 Supervised release; procedures, implementation, revocation.

(1) If the court determines under s. 980.07 (7) that supervised release is appropriate, the court shall order the county department under s. 51.42 in the county of intended

1 placement to assist the department of health and family services in implementing
2 the supervised release placement. ✓

3 (2) The department shall file with the court any additional rules of supervision
4 ^{stet} ~~not~~ inconsistent with the rules or conditions imposed by the court within 10 days of
5 imposing the rule. ✓

6 (3) If the department wishes to change a rule or condition of supervision
7 imposed by the court, it must obtain the court's approval. ✓

8 (4) An order granting supervised release places the person in the care, control,
9 and custody of the department. ✓ The department shall arrange for the care, control,
10 and treatment of the person in the least restrictive manner consistent with the
11 requirements of the person and in accordance with the order for supervised release. ✓
12 Before a person is actually released under this section, the court shall notify the
13 municipal police department ✓ and county sheriff ✓ for the municipality ✓ and county ✓
14 which the person will be residing. ✓ The notification requirement under this
15 subsection does not apply if a municipal police department or county sheriff submits
16 to the court a written statement waiving the right to be notified.

17 (5) (a) If the department concludes that a person on supervised release, or
18 awaiting placement on supervised release, violated or threatened to violate a rule of
19 supervised release, ✓ it may petition for revocation of the order granting supervised
20 release. The department may also detain the person. ✓

21 (b) If the department concludes that a person on supervised release, or
22 awaiting placement on supervised release, is a threat to the safety of others, it shall
23 detain the person and petition for revocation of the order granting supervised
24 release.

1 (c) If the department concludes that the order granting supervised release
2 should be revoked, it shall file a statement alleging the violation and a petition to
3 revoke the order for supervised release with the committing court and provide a copy
4 of each to the regional office of the state public defender responsible for handling
5 cases in the county where the committing court is located. If the department has
6 detained the person under par. (a) or (b), the department shall file the statement and
7 the petition and provide them to the state public defender within 72 hours after the
8 detention, excluding Saturdays, Sundays, and legal holidays. The court shall refer
9 the matter to the authority for indigency determinations under s. 977.07 (1) and
10 appointment of counsel under s. 977.05 (4) (j). The determination of indigency and
11 the appointment of counsel shall be done as soon as circumstances permit.

12 (d) The court shall hear the petition within 30 days, unless the hearing or time
13 deadline is waived. A final decision on the petition to revoke shall be made within
14 90 days of the filing of the petition. Pending the final revocation hearing, the
15 department may detain the person in the county jail or return him or her to
16 institutional care.

17 (6) (a) If the court finds after a hearing, by clear and convincing evidence, that
18 any rule has been violated and the court finds that the violation of the rule merits
19 the revocation of the order granting supervised release, the court may revoke the
20 order for supervised release and order that the person be placed in institutional care.
21 The person shall remain in institutional care until he or she is discharged from the
22 commitment or again placed on supervised release.

23 (b) If the court finds after a hearing, by clear and convincing evidence, that the
24 safety of others requires that supervised release be revoked, the court shall revoke
25 the order granting supervised release and order that the person be placed in

- 1 institutional care. The person shall remain in institutional care until he or she is
2 discharged from the commitment or again placed on supervised release.✓

NOTE: Revises, by repealing and recreating s. 980.08, ^{NOT}stats., current law relating to supervision of persons on supervised release. Under current law:

1. An order for supervised release places the person in the custody and control of DHFS. DHFS must arrange for control, care, and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release. A person on supervised release is subject to the conditions set by the court and to DHFS rules.✓

2. If DHFS alleges that a person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under DHFS rules. DHFS must submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases for that court's county within 72 hours after the detention.✓

3. The court must hear the petition within 30 days, unless the deadline is waived by the detained person.✓The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked. If the court determines that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the person be placed in an appropriate institution.✓

The ~~draft~~ ⁽¹⁾⁽²⁾⁽³⁾ modifies current law relating to revocation of supervised release as follows:

1. If DHFS concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release.✓

2. As under current law, DHFS may detain a person for a violation or threatened violation. In addition, under the ~~draft~~ ⁽¹⁾⁽²⁾⁽³⁾, if DHFS concludes that such a person is a threat to the safety of others, it must detain the person and petition for revocation of the order granting supervised release.✓

3. If DHFS concludes that the order granting supervised release should be revoked, it must file a statement alleging the violation and a petition to revoke the order with the committing court and provide a copy of each to the regional office of the state public defender within 72 hours after the detention. The court must hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition must be made within 90 days of its filing.✓

4. If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and that the violation merits the revocation of the order granting supervised release, the court may revoke the order and order that the person be placed in institutional care. If the court finds by clear and convincing evidence that the safety of others requires that supervised release be revoked, the court must revoke the order granting supervised release and order that the person be placed in institutional care.✓

3 SECTION 104. 980.09 (title) of the statutes is amended to read:

4 980.09 (title) **Petition for discharge; procedure with department's**
5 **approval.**✓

6 SECTION 105. 980.09 (1) (title) of the statutes is repealed.

1 **SECTION 106.** 980.09 (1) (a) of the statutes is renumbered 980.09 (1) and
2 amended to read:

3 980.09 (1) If the secretary department determines at any time that a person
4 committed under this chapter is ~~no longer~~ does not meet the criteria for commitment
5 as a sexually violent person, the secretary department shall ~~authorize the person to~~
6 petition the committing court for discharge. The ~~person~~ department shall file the
7 petition with the court and serve a copy upon the department of justice or the district
8 attorney's office that filed the petition under s. 980.02 (1), whichever is applicable.
9 The court, upon receipt of the petition for discharge, shall order a hearing to be held
10 within 45 90 days after the date of receipt of the petition.

NOTE: Amends s. 980.09 (1) to:

1. Change the time limit for a hearing on a DHFS petition for discharge from within 45 days to within 90 days (after the date of receipt of the petition).

2. Require DHFS, not the person committed, to file the petition when the department determines that the person does not meet the criteria of an SVP.

11 **SECTION 107.** 980.09 (1) (b) of the statutes is renumbered 980.09 (2m) and
12 amended to read:

13 980.09 (2m) At a hearing under this subsection section, the district attorney
14 or the department of justice, whichever filed the original petition, shall represent the
15 state and shall have the right to have the petitioner examined by an expert or
16 professional person of his, her or its choice. ~~The hearing shall be before the court~~
17 ~~without a jury.~~ The state has the burden of proving by clear and convincing evidence
18 that the petitioner ~~is still~~ currently meets the criteria for commitment as a sexually
19 violent person.

20 **SECTION 108.** 980.09 (1) (c) of the statutes is renumbered 980.09 (3) and
21 amended to read:

1 980.09 (3) If the court is satisfied that the state has not met its burden of proof
2 under ~~par. (b)~~ sub. (2m), the petitioner shall be discharged from the custody or
3 supervision of the department. If the court is satisfied that the state has met its
4 burden of proof under ~~par. (b)~~ sub. (2m), the court may proceed under 980.07 (7) (b)
5 to (d) to determine, ~~using the criterion specified in s. 980.08 (4)~~, whether to modify
6 the petitioner's existing commitment order by authorizing supervised release. ✓

7 **SECTION 109.** 980.09 (2) of the statutes is repealed. ✓

NOTE: Repeals the current provision regarding a discharge petition brought
without the approval of DHFS. See the NOTE to SEC. 109 for the replacement to s. 980.09
(2).

8 **SECTION 110.** 980.093 of the statutes is created to read:

9 **980.093 Petition for discharge without department's approval. (1)**

10 PETITIONS IN GENERAL. A committed person may petition the committing court for
11 discharge without the department's approval. ✓ The court shall deny the petition
12 under this section without a hearing unless the petition alleges facts from which the
13 court or jury may conclude the person's condition has changed so that the person does
14 not meet the criteria for commitment as a sexually violent person. ✓

15 **(2) COURT REVIEW OF PETITION.** The court shall review the petition within 30 ✓
16 days and the court may hold a hearing to determine if it contains facts from which
17 the court or jury may conclude that the person does not meet the criteria for
18 commitment as a sexually violent person. ✓ In determining under this subsection
19 whether facts exist that might warrant such a conclusion, the court shall consider
20 any current or past reports filed under s. 980.07, relevant facts and arguments in the
21 petition and in the state's written response, ✓ arguments of counsel, ✓ and any
22 supporting documentation provided by the person or the state. ✓ If the court
23 determines that the petition does not contain facts from which a court or jury may

1 conclude that the person does not meet the criteria for commitment, the court shall
2 deny the petition. ✓

3 (3) HEARING. The court shall hold a hearing within 90 days of the determination
4 that the petition contains facts from which the court or jury may conclude that the
5 person does not meet the criteria for commitment as a sexually violent person. ✓ The
6 state has the burden of proving by clear and convincing evidence that the person
7 meets the criteria for commitment as a sexually violent person. ✓

8 (4) DISPOSITION. If the court or jury is satisfied that the state has not met its
9 burden of proof under sub. (3), ✓ the petitioner shall be discharged from the custody
10 of the department. ✓ If the court or jury is satisfied that the state has met its burden
11 of proof under sub. (3), ✓ the court may proceed under s. 980.07 (7) ✓ (b) to (d) to
12 determine whether to modify the petitioner's existing commitment order by
13 authorizing supervised release. ✓

NOTE: Creates new s. ^{NO I}980.093 revising the current law relating to discharge from
commitment. Under current law:

1. If the secretary of DHFS determines at any time that a person is no longer an
SVP, the secretary must authorize the person to petition the committing court for
discharge. The court must hold a hearing within 45 days after receipt of the petition. The
hearing must be before the court without a jury. The state has the burden of proving by
clear and convincing evidence that the person is still an SVP. ✓

2. If the court is satisfied that the state has not met its burden of proof, the
petitioner must be discharged from the custody and supervision of DHFS. If the court is
satisfied that the state has met its burden, the court may proceed to determine whether
to modify the person's existing commitment order by authorizing supervised release. ✓

3. A person may also petition the court for discharge from custody or supervision
without the approval of the secretary of DHFS. ✓

4. At the time of the person's reexamination, the secretary of DHFS must provide
the person with written notice of the person's right to petition for discharge over the
secretary's objections. If the person does not affirmatively waive the right to petition, the
court must set a probable cause hearing to determine whether facts exist that warrant
a hearing on whether the person is still an SVP. ✓

5. If the court determines at the probable cause hearing that probable cause exists
to believe that the committed person is no longer an SVP, the court must set a hearing
on the issue. The hearing must be to the court. The state has the right to have the person
evaluated by experts chosen by the state. The state has the burden of proving by clear
and convincing evidence that the committed person is likely to engage in acts of sexual
violence or has not made significant progress in treatment or has refused treatment. If ✓
the court is satisfied that the state has not met its burden of proof, the petitioner must

be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing SVP commitment order by authorizing supervised release. ✓

The ~~draft~~ modifies the provisions relating to petitions for discharge that do not have DHFS's approval as follows: ✓

1. The court must deny the petition without a hearing unless the petition alleges facts from which the court may conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. ✓

2. The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of 6. A verdict must be agreed to by at least 5 of the 6 jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The ~~substitute amendment~~ specifies that the general rules of evidence are inapplicable at such hearings. ✓

3. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release. ✓

1 SECTION 111. ^{note A.R. mod (p5)(p11)} 980.095 of the statutes is created to read: ✓

2 **980.095 Procedures for discharge hearings. (1) USE OF JURIES.** (a) The

3 district attorney or the department of justice, whichever filed the original petition,

4 or the petitioner or his or her attorney may request that a hearing under s. 980.093

5 or 980.096 be to a jury of 6. A jury trial is deemed waived unless it is demanded

6 within 10 days of the filing of the petition for discharge. ✓

7 (b) Juries shall be selected and treated in the same manner as they are selected

8 and treated in civil actions in circuit court. ✓ The number of jurors prescribed in

9 par. (a), plus the number of peremptory challenges available to all of the parties, shall

10 be called initially and maintained in the jury box by calling others to replace jurors

11 excused for cause until all jurors have been examined. The parties shall thereupon

12 exercise in their order, the state beginning, the peremptory challenges available to

13 them, and if any party declines to challenge, the challenge shall be made by the clerk

14 by lot. ✓

1 (c) No verdict shall be valid or received unless it is agreed to by at least 5 of the
2 jurors. *agree to it*

3 (2) DEPARTMENT'S RIGHT TO BE HEARD. The department of justice shall represent
4 the department of health and family services at any discharge hearing unless the
5 departments have adverse interest. *✓* If the departments have adverse interests, the
6 department of health and family services *✓* shall be represented at the hearing by its
7 agency counsel or an attorney that it retains. *✓*

8 (3) POST VERDICT MOTIONS. Motions after verdict may be made without further
9 notice upon receipt of the verdict. *✓*

10 (4) APPEALS. Any party may appeal an order under this subsection as a final
11 order under chs. 808 and 809. *✓*

NOTE: Creates new s. 980.095 providing for a separate jury requirement for
discharge hearings. *✓* Specifically, the DA or DOJ, whichever filed the original petition, or
the petitioner may request that the discharge hearing be to a jury of 6. A jury trial is
deemed waived unless it is demanded within 10 days after the filing of the petition for
discharge. No verdict is valid unless it is agreed to by at least 5 of the jurors. See, also,
the NOTE to SEC. 110.

12 *SECTION 110 use NA fgh (P72) ✓*
SECTION 112. 980.10 of the statutes is repealed.

NOTE: Repeals a provision granting an additional method by which a committed
person may petition a committing court for discharge at any time. *✓* However, under this
provision, if a person has previously filed a petition for discharge without the secretary's
approval and the court determined that the petition was frivolous or that the petitioner
remained an SVP, then the court was required to deny any subsequent petition without
a hearing until the petition contained facts upon which a court could find that the
condition of the person had so changed that a hearing was warranted. *✓*

13 **SECTION 113.** 980.101 (2) (a) of the statutes is amended to read:

14 980.101 (2) (a) If the sexually violent offense was the sole basis for the
15 allegation under s. 980.02 (2) *✓* (a) and there are no other judgments relating to a
16 sexually violent offense committed by the person, the court shall reverse, set aside,
17 or vacate the judgment under s. 980.05 *✓* (5) that the person is a sexually violent

1 person, vacate the commitment order, and discharge the person from the custody or
2 supervision of the department. ✓

3 **SECTION 114.** 980.11 (2) (intro.) ✓ of the statutes is amended to read:

4 980.11 (2) (intro.) If the court places a person on supervised release under s.
5 980.08 or discharges a person under s. 980.09 ✓ or 980.10 ✓ 980.093, the department
6 shall do all of the following: ✓

7 **SECTION 115.** 980.12 (1) of the statutes is amended to read:

8 980.12 (1) Except as provided in ss. 980.03 (4) ✓ 980.031 (3) ✓ and 980.08 (3) ✓, the
9 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all
10 costs relating to the evaluation, treatment, and care of persons evaluated or
11 committed under this chapter.

12 **SECTION 116.** 980.14 (title) of the statutes is created to read:

13 **980.14 (title) Immunity.**

14 **SECTION 117.** 980.14 (1) of the statutes is created to read:

15 980.14 (1) In this section, "agency" means the department of corrections, the
16 department of health and family services, the department of justice, or a district
17 attorney.

NOTE: See the NOTE to SEC. 71.

18 **SECTION 118. Initial applicability.**

19 (1) This act first applies to reviews regarding detention and probable cause
20 hearings under section 980.04 of the statutes, as affected by this act, and trials under
21 section 980.05 of the statutes, as affected by this act, that are based on a petition filed
22 under s. 980.02 of the statutes, as affected by this act, on the effective date of this
23 subsection. ✓

1 (2) This act first applies to periodic reexaminations conducted under section
2 980.07 of the statutes, as affected by this act, begun on the effective date of this
3 subsection and to court proceedings resulting from those reexaminations. ✓

4 (3) This act first applies to proceedings to revoke supervised release under
5 section 980.08 (5) of the statutes, as affected by this act, that are commenced on the
6 effective date of this subsection, except that the treatment of section 980.08 (5) of the
7 statutes, with respect to where a person may be detained while a petition to revoke
8 supervised release is pending, first applies to a person whose detention commences
9 on the effective date of this subsection. ✓

10 (4) This act first applies to discharge proceedings commenced on the effective
11 date of this subsection. ✓

12 **SECTION 119. Effective date.**

13 (1) This act takes effect on the first day of the 2nd month beginning after
14 publication. ✓

15 (END)

Am: 20.435 (2)(b)

(bj) *Competency examinations and conditional and supervised release services.* Biennially, the amounts in the schedule for outpatient competency examinations and for payment by the department of costs for treatment and services for persons released under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4) (e) or ~~980.08 (5)~~, for which the department has contracted with county departments under s. 51.42 (3) (aw) 1. d., with other public agencies, or with private agencies to provide the treatment and services.

20.435 (2) ~~Q~~

✓

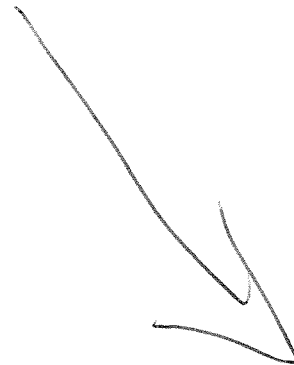
B

✓
980.07(7)

✓
s. 980.08(5) ^ 2003

stats. ^

INS (12-1



12-1 pg 2

Am;
46.10(2)

216.10

(2) Except as provided in subs. (2m) and (14) (b) and (c), any person, including but not limited to a person admitted, committed or placed under s. 975.01, 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14 (2) and (5), 971.17 (1), 975.06 and 980.06, receiving care, maintenance, services and supplies provided by any institution in this state including University of Wisconsin Hospitals and Clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, any person receiving care and services from a county department established under s. 51.42 or 51.437 or from a facility established under s. 49.73, and any person receiving treatment and services from a public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4) (e) or ~~980.08 (5)~~ and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability.

50980.08(5) ^
2003 stats. ^

✓
980.07(7)

end of 12-1

Am; 51.30(4)(b) 10m.

10m. To the department of justice or a district attorney under s. 980.015 (3) (b), if the treatment records are maintained by an agency with jurisdiction, as defined in s. ~~980.015 (1)~~, that has control or custody over a person who may meet the criteria for commitment as a sexually violent person under ch. 980.

51.30 (4) (b)

Σ
B

980.01(1)(d)

INS 17-9

Am, 51.42(3)(aw)1.d.

d. Provide treatment and services that are specified in a conditional release plan approved by a court for a person who is a county resident and is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised release plan approved by a court under s. 980.06 (2) (c), 1997 stats., or s. ~~980.08 (5)~~. If the county department provides treatment and services under this subdivision, the department of health and family services shall, from the appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the treatment and services.

51.42 (3) (aw) 1.

✓

B

INS

18-18

✓
980.07(7)

S. 980.08(5)[^]
2003 stats⁰

am;

301.03(19)

301.03(19) Work to minimize, to the greatest extent possible, the residential population density of sex offenders, as defined in s. 302.116 (1) (b), who are on probation, parole, or extended supervision or placed on supervised release under s. 980.06 (2) (c), 1997 stats., or s. ~~980.08 (5)~~ ✓

980.07(7)

s. 980.08 (5); 2003 stats. ^

1/15

(21-3)

Am, 978.04 ✓

978.04 Assistants in certain prosecutorial units. The district attorney of any prosecutorial unit having a population of less than 100,000 may appoint one or more assistant district attorneys as necessary to carry out the duties of his or her office and as may be requested by the department of administration authorized in accordance with s. 16.505. Any such assistant district attorney must be an attorney admitted to practice law in this state and, except as provided in s. 978.043, may perform any duty required by law to be performed by the district attorney.

(1)

INS 32-4

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2215/p2ins
MGD&CMH:.....

; INSERTS OUT OF ORDER!

✓

analysis INSERT

anal: jlcnote

(CS)

This bill is explained in the Notes provided by the Joint Legislative Council in the bill.

INSERT 22/2

✓ ss. 980.05 (2) ✓ and (2m) (c), 980.09 (2m), 980.093 (3), and 980.095 (3) ✓

INSERT 35/0

SECTION ~~1~~ 1. 980.01 (3) of the statutes is created to read:

980.01 (3) Except in ss. 980.09, 980.093, and 980.095, "petitioner" means the agency or person that filed a petition under s. 980.02.

INSERT 47/16

(3m) WHEN DISCLOSURE MUST BE MADE. A party required to make a disclosure under this section shall do so within a reasonable time after the probable cause hearing and within a reasonable time before a trial under s. 980.05, if the other party's demand is made in connection with a trial. If the demand is made in connection with a proceeding under s. 980.07 (7), 980.09 (2m), or 980.093 (3), the party shall make the disclosure within a reasonable time before the start of that proceeding.

INSERT 55-9

SECTION ~~2~~ 2. 980.04 (5) of the statutes is amended to read:

980.04 (5) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under sub. (2) (a), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

INSERT 55-15

SECTION ~~3.~~ 980.05 (2) of the statutes is amended to read:

980.05 (2) The person who is the subject of the petition, the person's attorney, ~~or the department of justice or the district attorney~~ petitioner may request that a trial under this section be to a jury of 12. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under s. 980.04 (2) [✓](a). If no request is made, the trial shall be to the court. The person, the person's attorney, [✓]or the ~~district attorney or department of justice, whichever is applicable,~~ petitioner may withdraw his, her[^], or its request for a jury trial if the 2 persons who did not make the request consent to the withdrawal. [✓]

History: 1993 a. 479; 1999 a. 9.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

(date)

LRB-2215/111n

MGD: a:...

p2 dn
↑ please fix

Timk

Ron:

This version of the bill differs from the version approved by the Joint Legislative Council's Special Committee on Sexually Violent Person Commitments, but the differences are non-substantive. In addition, please note the following:

1. Sections 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30 (3) (bm) and (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 938.396 (10), and 938.78 (2) (e) specify that information that each of those provisions makes available may be disclosed "for any purpose consistent with any proceeding under ch. 980." Does that mean that the information can be released to the general public, given that public protection is one of the purposes of ch. 980 proceedings? If not, what criteria would a court use in determining the appropriateness of a particular disclosure?

2. Section 51.375 (2) (b) would permit public inspection of the results of a lie detector test if they become part of the court record. Was that the Committee's intent?

3. It is unclear how a person would escape from supervised release under s. 946.42 (3m) (b), given that "escape" is defined to mean "to leave in any manner without lawful permission or authority."

4. Instead of defining "act of sexual violence" in s. 980.01 (1g), it would make more sense to replace references to that term in the statutes with "sexually violent offense." For example, s. 980.01 (2) should be amended as follows:

"Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence commit sexually violent offenses.

This would require the reader to turn to only one definition to determine the meaning of these provisions (as opposed to two if the new definition is created). In addition, it would allow for the definition of "act of sexual violence" in s. 980.11 to be eliminated.

5. There are several problems with the changes being made to s. 980.015 (2) (a). First, with the phrase "sentence of" being inserted before "imprisonment," this provision might be construed to require the agency with jurisdiction to provide notice with respect to people approaching the end of parole or a term of extended supervision. Is that the Committee's intent? (If so, that would be consistent with the approach taken

in s. 980.015 (2) (c) and (d), but it would require many more notices than those two provisions would.)

Second, the use of the phrase "term of confinement in prison that was imposed" may make it difficult for the state to take advantage of *State v. Parrish*, 2002 WI App 263, 258 Wis. 2d 521, with respect to a person confined for violating a condition of extended supervision. Time served upon revocation of extended supervision is not part of the "term of confinement in prison that was imposed." Therefore, the state might not receive notice about the person's impending re-release. (On the other hand, the person might still be covered under the imprisonment clause, depending on what the Committee's intent was for that clause.) Moreover, the "continuous term of incarceration" language may make the "term of confinement in prison" clause redundant.

Third, in contrast to the approach approved in *State v. Wolfe*, 2001 WI App 136, 246 Wis. 2d 233, the "continuous term of incarceration" language appears to require the agency with jurisdiction to wait until 90 days before the end of the dispositional order (or criminal sentence) that ends last, even if an earlier-expiring order was imposed for a sexually violent offense. Was that the Committee's intent with respect to cases like *Wolfe*? Or does the agency provide notice at the end of the disposition relating to the sexually violent offense (as in *Wolfe*)? Or at either time?

Fourth, because the definition of "incarceration" includes placements under chs. 48 and 938, this provision makes s. 980.015 (2) (b) redundant.

6. It is unclear what is meant by "in custody under a sentence" in s. 980.02 (1) (b) 3. Under current law, a person on parole or extended supervision is in the custody of DOC. Is this provision intended to allow a district attorney for a county to file a petition with respect to a person on parole or extended supervision who is in that county for any period of time?

7. Like current s. 980.02 (1) (b) 2. and (4) (am) and (b), s. 980.02 (1) (b) 3. (which the bill creates) uses the term "commitment order" without specifically referring to s. 971.17. Should it? (Note that, elsewhere in ch. 980, "commitment order" refers to a commitment under ch. 980.)

8. How does s. 980.02 (1m) apply to a person who is released to parole or extended supervision? Must the state file the petition before the person is released? Or may it file it at any time before parole or extended supervision ends?

9. Arguably, the repeal of s. 980.02 (2) (ag) allows the state to file a petition with respect to a person on probation. Was that the Committee's intent?

10. It is unclear whether, under s. 980.03 (5), an expert who relies on tests conducted by another expert would ever be permitted to testify. (If that person may testify, the bill would need to make clear that a party cannot avoid the disclosure requirements by having one expert conduct the tests and another testify based on the test results.)

11. Is the court's expert payable in the same way as an expert appointed under s. 980.031 (3)? In addition, s. 980.031 (1) appears to preclude the court from appointing its own expert once the person has been committed. Was that the Committee's intent?

12. Sections 971.22 and 971.225, on which s. 980.034 (3) and (4) are based, is poorly drafted. I have made some minor changes to those provisions, but this would be a much better way of structuring them:

(3) If the court determines that there exists in the county where the action is pending such prejudice that a fair trial cannot be had, it shall do one of the following:

(a) Order that the trial be held in any county where an impartial trial can be had. The judge who orders a change in the place of trial under this paragraph shall preside at the trial. Preliminary matters before trial may be conducted in either county at the discretion of the court.

(b) Order the selection of a jury from another county, but only if the court will sequester the jurors during the trial and only if the estimated cost to the county of using the procedure under this paragraph is less than the estimated cost to the county of using the procedure under par. (a). A court that proceeds under this paragraph shall follow the procedure under par. (a) until the jury is chosen in the 2nd county. The proceedings shall then return to the original county using the jurors selected in the 2nd county. The original county shall reimburse the 2nd county for all applicable costs under s. 814.22.

(4) The court may act under this section only once per case.

If you would like me to revise those provisions in this manner, please let me know. If you do not, there are other changes that still need to be made to achieve the Committee's objectives. First, the sentence beginning with "Only one change" in sub. (3) needs to be moved. Otherwise, a court could change venue to a 2nd county and then pick a jury from a 3rd. Second, sub. (4) (a) 2. needs to be rewritten. This provision should refer to sub. (3) instead of sub. (1). Since the requirement for a change of venue is described more specifically in sub. (3).

13. It is not clear why "psychological test, instrument, experiment, or comparison" is listed in s. 980.036 (2) (h) and (3) (d). Wouldn't that be considered part of a "mental examination"? (Note that the provisions in current law on which these provisions are based (namely, s. 971.23 (1) (e) and (2) (am)) do not contain use the word "psychological.") In addition, what type of "scientific" procedure would be undertaken that is not part of a physical or mental examination?

14. Section 980.036 (6) provides for taking the deposition of a witness under s. 967.04 (2) to (6) at the court's direction under certain circumstances. But s. 980.036 (6) does not refer to s. 967.04 (1), which allows the court to order a witness to produce records and other objects at the deposition. Was this omission intended? Also, who is the "party at whose instance [the] deposition is to be taken" under s. 967.04 (2)? Finally, if a person deposed under s. 967.04 is in custody, s. 967.04 (4)(b) requires the county to pay the costs of bringing the person to the deposition. That may make sense when the deposition precedes a criminal trial, but not when the deposition precedes a ch. 980 trial, because the person who is the subject of the ch. 980 proceeding will almost always be in the state's custody. (I realize that s. 980.036 (6) replicates s. 971.23 (6) -- and the problems that statute contains -- but I thought I should alert you to these issues.)

15. Section 980.038 (1) indicates that motions challenging the timeliness of a petitions are still appropriate, notwithstanding s. 980.038[✓](5). But what is the remedy if such a motion is granted? [✓]

16. Section 980.038 (4) indicates that ss. 809.30[✓] and 809.40[✓] apply to ch. 980[✓] proceedings, but it is not clear how both of them can apply. [✓]In view of the change to s. 809.30 (1) (c), perhaps only s. 809.30 applies? [✓]If so, there are a number of other changes that need to be made to that section -- such as the title, the definitions of "person" and "prosecutor," and s. 809.30 (2)[✓](a), to name a few. [✓]

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2215/P2dn
MGD:lmk:ch

August 23, 2005

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